

Assembly Bill No. 2274

Passed the Assembly August 22, 2012

Chief Clerk of the Assembly

Passed the Senate August 20, 2012

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2012, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 391.1, 391.2, 391.3, and 391.6 of the Code of Civil Procedure, relating to civil procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 2274, Lara. Vexatious litigants.

Existing law provides that a defendant in any litigation pending in any court in the state may move the court, upon notice and hearing, for an order requiring the plaintiff to furnish security, based upon the ground that the plaintiff is a vexatious litigant, as defined, and has no reasonable probability of prevailing. Upon motion, existing law requires the court to consider specified evidence as may be material to the ground of the motion, but prohibits any determination made by the court to be or be deemed a determination of any issue in the litigation. Existing law requires the court to order the plaintiff to furnish security if, after hearing the evidence upon the motion, the court determines that the plaintiff is a vexatious litigant and that there is no reasonable probability that the plaintiff will prevail. Existing law provides that when a motion to require security is filed prior to trial, the litigation is stayed and the moving defendant is not required to plead until 10 days after the motion is denied or, if granted, 10 days after the required security has been furnished and the moving defendant has been given notice. Existing law provides that if a motion is filed any time after trial begins, the litigation is required to be stayed for such period after the denial of the motion or the furnishing of the required security, as determined by the court.

This bill would additionally authorize a defendant to move for an order to dismiss litigation or to seek relief in the alternative, as specified. The bill would require the defendant to combine all grounds for relief in one motion.

This bill would require the court to order the litigation dismissed if, after hearing evidence on the motion, the court determines the litigation has no merit. The bill would specify that these provisions would only apply to litigation filed in a court of this state by a vexatious litigant subject to a prefiling order, as specified, who was represented by counsel at the time the litigation was filed and

who became in propria persona after the withdrawal of his or her attorney.

The people of the State of California do enact as follows:

SECTION 1. Section 391.1 of the Code of Civil Procedure is amended to read:

391.1. In any litigation pending in any court of this state, at any time until final judgment is entered, a defendant may move the court, upon notice and hearing, for an order requiring the plaintiff to furnish security or for an order dismissing the litigation pursuant to subdivision (b) of Section 391.3. The motion for an order requiring the plaintiff to furnish security shall be based upon the ground, and supported by a showing, that the plaintiff is a vexatious litigant and that there is not a reasonable probability that he or she will prevail in the litigation against the moving defendant.

SEC. 2. Section 391.2 of the Code of Civil Procedure is amended to read:

391.2. At the hearing upon the motion the court shall consider any evidence, written or oral, by witnesses or affidavit, as may be material to the ground of the motion. Except for an order dismissing the litigation pursuant to subdivision (b) of Section 391.3, no determination made by the court in determining or ruling upon the motion shall be or be deemed to be a determination of any issue in the litigation or of the merits thereof.

SEC. 3. Section 391.3 of the Code of Civil Procedure is amended to read:

391.3. (a) Except as provided in subdivision (b), if, after hearing the evidence upon the motion, the court determines that the plaintiff is a vexatious litigant and that there is no reasonable probability that the plaintiff will prevail in the litigation against the moving defendant, the court shall order the plaintiff to furnish, for the benefit of the moving defendant, security in such amount and within such time as the court shall fix.

(b) If, after hearing evidence on the motion, the court determines that the litigation has no merit and has been filed for the purposes of harassment or delay, the court shall order the litigation dismissed. This subdivision shall only apply to litigation filed in a court of this state by a vexatious litigant subject to a prefiling order pursuant to Section 391.7 who was represented by counsel

at the time the litigation was filed and who became in propria persona after the withdrawal of his or her attorney.

(c) A defendant may make a motion for relief in the alternative under either subdivision (a) or (b) and shall combine all grounds for relief in one motion.

SEC. 4. Section 391.6 of the Code of Civil Procedure is amended to read:

391.6. Except as provided in subdivision (b) of Section 391.3, when a motion pursuant to Section 391.1 is filed prior to trial the litigation is stayed, and the moving defendant need not plead, until 10 days after the motion shall have been denied, or if granted, until 10 days after the required security has been furnished and the moving defendant given written notice thereof. When a motion pursuant to Section 391.1 is made at any time thereafter, the litigation shall be stayed for such period after the denial of the motion or the furnishing of the required security as the court shall determine.

Approved _____, 2012

Governor